IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No. 5330 OF 2006.

Shri. Ramesh Onkar Patil. ..Petitioner.

Vs.

M/s. Samsonite India Ltd. ..Respondent.

Mr. Umesh Mankapure, Advocate for the Petitioner.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:5TH DECEMBER, 2006.

P.C.:-

1. Heard.

2. The petitioner challenges the concurrent findings arrived at by the Courts below on the point that the petitioner was employed in a Supervisory capacity without there being any document. Both the Courts below on detail analysis of the evidence have held that the petitioner's duty comprised of the work of supervisory nature and he was required to ascertain the quality of the product. His salary was of Rs 7000/- per month and he was a member of the Officer Club for which every

month membership fee was being deducted from his salary. The Labour Court Nashik in its judgment has clearly held that it has been admitted by the petitioner that he was required to inspect the finished products and issue necessary guide-lines to the workers. The Revisional Court has held in the impugned order that the evidence on records clearly indicates that the nature of the duties of the petitioner were of supervisory nature and he had never disputed validity of his appointment as Quality Officer. Nothing is brought to my notice which could reveal the said findings to be contrary to the materials on record.

3. Reliance was sought to be placed in a decision of the Apex Court in the matter of **Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others, A.I.R. 1968 S.C. 1413,** while contending that the best evidence was in possession of the respondent in relation to the nature of the duties performed by the petitioner,however, no documentary evidence in that regard was produced and, therefore, the petitioner is entitled for adverse inference against the respondent which the Courts below

failed to draw and, thereby acted illegally.

4. The Apex Court in **Gopal Krishnan Ketkar (supra)** had held that a party in possession of best evidence which would throw light on the issue in controversy withholds the same from the court, adverse inference can be drawn. However, that observation was made in the facts wherein it was clearly observed by the Apex Court;

> "It is significant that the name of the Ketkar family is absent from the evidence on record. No convincing reason was furnished on behalf of the appellant to show why his name was not entered in the "Sud". It is also important to notice that the appellant has furnished no documentary evidence to show how his family acquired title to the land from the earliest time, there is no sanad or grant produced by the appellant to show that he had acquired title to the land."

5. Obviously, ruling of the Apex Court is in relation to failure on the part of a party who is required to discharge the onus of disproving the presumption arising out of the entries in the revenue records. It has no application in the case in hand, nor it is of

any help to the petitioner to contend that failure on the part of the respondent to produce the documentary evidence regarding duties of the petitioner would entitle the petitioner to draw adverse inference against the respondent. It was for the petitioner to lead necessary evidence in support of his complaint and the evidence led on record clearly discloses that he was performing duties of supervisory nature. The concurrent findings in that regard are clearly borne out from the record and do not warrant any interference as the same do not disclose any jurisdictional error nor warrant any interference in exercise of writ jurisdiction under Article 227 of the Constitution. The petition, therefore, fails and is hereby rejected.

[R.M.S.KHANDEPARKAR,J]